

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation Into the Revenue  
Requirement of Roseville Telephone Company  
Pursuant to Decision 00-11-039.

Investigation 01-04-026  
(Filed April 19, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING IN PART AND DENYING IN PART THE OFFICE OF  
RATEPAYER ADVOCATES' MOTION TO STRIKE**

On October 10, 2002, the Office of Ratepayer Advocates (ORA) filed a motion pursuant to Rule 45 of the Commission's Rules of Practice and Procedure, to strike portions of the opening testimony of Jay Kinder and of the opening and rebuttal testimony of Greg Gierczak on behalf of Roseville Telephone Company (Roseville).<sup>1</sup> ORA makes its motion on the grounds that the arguments and recommendations in portions of this testimony are beyond the scope of the proceeding or have already been barred by previous Commission decisions.

ORA asserts that in Decision (D.) 99-11-039 in Application (A.) 99-08-043, the Commission found that it was not appropriate to use the California High Cost Fund-B (CHCF-B) as a permanent source of funding for the \$11.5 million that Roseville had been receiving from Pacific Bell under a Settlement Transition agreement entered into by the two companies.

---

<sup>1</sup> At the Prehearing Conference held in this proceeding on October 17, 2002, ORA expanded its motion to include those portions of Roseville's compliance filing that dealt with the same issue.

ORA states that on May 4, 2001, Roseville filed a Petition for Clarification/Modification of D.00-11-039, asking that the decision be modified so as not to preclude the use of the CHCF-B as a permanent means of revenue recovery for Roseville. On May 2, 2002, the Commission denied Roseville's petition in D.02-05-009.

ORA states that in the Opening Testimony of Greg Gierczak and Jay Kinder, and the Rebuttal Testimony of Greg Gierczak,<sup>2</sup> Roseville argues that it should be allowed to use the CHCF-B fund as an interim replacement source for the \$11.5 million annual Extended Area Service (EAS) payment it used to receive from Pacific. According to ORA, the Commission has already twice considered and twice denied Roseville's underlying request to use the CHCF-B as its source of funding. In spite of the fact that both the Order Instituting Investigation that initiated this proceeding and the Scoping Memo issued by the assigned commissioner limit the scope to the appropriate source of permanent funding to replace the \$11.5 million, Roseville argues that it should be allowed to recover the EAS payment from the CHCF-B on an interim basis. Therefore, ORA requests that all of Roseville's testimony regarding recovery of the \$11.5 million EAS payment from the CHCF-B should be stricken as outside the scope of this proceeding or barred by previous Commission decisions.

Roseville filed in response to ORA's motion on October 23, 2002. Roseville proposes that the \$11.5 million annual payment that is the subject of this

---

<sup>2</sup> ORA moves to strike all portions of the proposed testimony of Roseville that argue for any recovery of the \$11.5 million annual EAS payment from the CHCF-B. These arguments appear in the Opening Testimony of Greg Gierczak on pages 2, 17-25, 32, in the Opening Testimony of Jay Kinder on pages 2, 10, 12-13 and in the Rebuttal Testimony of Greg Gierczak on pages 55-57.

proceeding be recovered by interim payments from the CHCF-B pending completion of the anticipated review of the draws that Roseville receives from the fund. Roseville rebuts ORA's assertion that it is not a "permanent solution" saying that Roseville's proposal provides a path towards a permanent solution in a pending proceeding before the Commission. On that basis, Roseville states that the testimony submitted is proper. Roseville concludes that the scope of this proceeding does not foreclose consideration of Roseville's interim CHCF-B proposal.

Roseville also states that the Commission should not limit the record as proposed by ORA because it would unnecessarily limit the information on which the Commission may rely on as it considers its options for addressing Roseville's revenue requirement and rate design.

Roseville asserts that ORA's petition is not timely. ORA has had notice of Roseville's prepared testimony since approximately June 28, 2002 and should not be permitted to strike testimony at this late stage of the proceeding. Instead of timely raising the issue, ORA waited for months to raise the issue. During that time Roseville sent a notice informing customers of this proceeding and the rate design options being considered, and all parties prepared and submitted rebuttal testimony. Roseville states that ORA's delay affects the accuracy of the customer notice that Roseville sent to its subscribers, a notice that included a description of Roseville's proposal in this case.

## **Discussion**

First, ORA is correct that D.02-05-009 denied Roseville's Petition to Modify D.00-11-039 and upheld the Commission's determination that the CHCF-B is not an appropriate permanent source of funding to replace the \$11.5 million EAS payment Roseville previously received from Pacific. In other words, Roseville is

precluded from proposing use of the CHCF-B as a source of permanent recovery, under the current rules that govern the CHCF-B. However, what Roseville is proposing in this proceeding is somewhat different. Roseville proposes to request changes to the Commission's rules in the upcoming triennial review of the universal service program, which would allow Roseville to recover the \$11.5 million from the CHCF-B. I will allow Roseville to pursue this option, as long as it is clear that Roseville is proposing future changes to the CHCF-B, and not proposing use of the CHCF-B as currently formulated.

However, in reviewing the portions of testimony that ORA is proposing to strike, I find that Roseville is arguing that the Cost Proxy Model (CPM) used in the universal service proceeding to determine each ILEC's draw from the CHCF-B is not appropriate for Roseville. I do not intend to litigate any issues relating to the adequacy of the CPM for Roseville in this proceeding; that issue is clearly beyond the scope of this proceeding. The appropriate place for Roseville to raise that issue is in the upcoming triennial review. Therefore, the portions of testimony that relate to perceived inadequacies of the CPM shall be stricken. Those sections are as follows:

**Testimony of Greg R. Gierczak:**

Page 3: Item 4 which begins on line 20 through line 22.

Page 19, line 13 through p. 22, line 19

Page 24, lines 6-15

**Testimony of Jay B. Kinder:**

Page 12, line 11 through page 13, line 7

**Rebuttal Testimony of Greg R. Gierczak:**

Page 56, lines 7-20

ORA amended its motion to strike at the PHC to include portions of Roseville's compliance filing that dealt with use of the CHCF-B. All portions of the compliance filing that deal with inadequacies of the CHCF-B shall also be stricken.

Elimination of those sections will allow Roseville to make the argument that the issue of permanent funding should be deferred to the triennial review without pre-litigating in this proceeding any issues relating to the CPM or the appropriate uses of the CHCF-B.

There are no time limits in our rules for filing a motion to strike, and those motions are frequently filed just prior to the commencement of hearings. However, since Roseville has already notified its customers of its preferred option, namely to defer consideration of this issue to a later Commission proceeding, it would be difficult at this time to eliminate that option from the proceeding.

**IT IS SO RULED.**

Dated October 29, 2002, at San Francisco, California.

/s/ KAREN A. JONES

---

Karen A. Jones  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting in Part and Denying in Part the Office Of Ratepayer Advocates' Motion to Strike on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated October 29, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.